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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 12 2001

FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 94-150
Regulations Governing Attribution)	
Of Broadcast and Cable/MDS Interests)	
)	
Review of the Commission's)	MM Docket No. <u>92-51</u>
Regulations and Policies)	
Affecting Investment)	
In the Broadcast Industry)	
)	
Reexamination of the Commission's)	MM Docket No. 87-154
Cross-Interest Policy)	

PETITION FOR RECONSIDERATION

National Broadcasting Company, Inc. ("NBC"), pursuant to Section 1.429 of the Commission's Rules, seeks reconsideration of the FCC's *Memorandum Opinion and Order on Reconsideration*, FCC 00-438 (rel. Jan. 19, 2001), 66 Fed. Reg. 9962 (Feb. 13, 2001) ("*Reconsideration Order*"). Specifically, NBC submits that in light of the recent decision of the U.S. Court of Appeals for the D.C. Circuit in *Time Warner Entertainment Co., L.P. v. FCC*,¹ the Commission must reinstate the single majority shareholder exemption to the broadcast attribution rules.

In the *Reconsideration Order*, the FCC modified its broadcast attribution rules by eliminating the single majority shareholder exemption. That exemption provided that in a corporation in which a single shareholder owns more than 50 percent of the voting stock, the interests of the minority shareholders are not attributable. The Commission

¹ 2001 WL 201978 (D.C. Cir. 2001).

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made this modification to the broadcast rules solely because the agency had previously eliminated the exemption in its cable attribution rules. As acknowledged by the FCC:

UCC asks the Commission to eliminate the single majority shareholder exemption for broadcasters, arguing that it is arbitrary and capricious to eliminate the exemption for cable systems and not for broadcast stations. We grant UCC's request . . . *we see no rational basis to distinguish between cable and broadcasting that would justify eliminating the exemption for the cable ownership rules while retaining it for the broadcast ownership rules.*²

In the recent action of the U.S. Court of Appeals for the D.C. Circuit, the Court reversed the Commission's decision to eliminate the single majority shareholder exemption in the cable attribution rules.³ The Court concluded that there was no support for the agency's action:

Removal of the exemption is a tightening of the regulatory screws, if perhaps a minor one. It requires some affirmative justification . . . yet the Commission effectively offers none. Its "concern" about the possibility of influence would be a basis, if supported by some finding grounded in experience or reason, but the Commission made no finding at all. Accordingly, deletion of the exemption cannot stand.⁴

The record in the instant proceeding is similarly devoid of any findings to support elimination of the single majority exemption. Indeed, in its 1999 *Report and Order* in the broadcast attribution proceeding, the FCC specifically *declined* to eliminate the single majority shareholder exemption.⁵ This decision was reached at the conclusion of a four-year rulemaking proceeding in which the Commission adopted two notices of proposed rulemaking, both before and after the adoption of the Telecommunication Act of 1996,

² See *Reconsideration Order* ¶ 41 (emphasis added).

³ *Time Warner Entertainment Co., L.P. v. FCC*, 2001 WL 201978 at *19.

⁴ *Id.* at *18 (citations omitted).

⁵ *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Report and Order*, 14 FCC Rcd 12559, 12579 (1999).

and “had the benefit of numerous comments.”⁶ The only new “evidence” offered by the agency to support elimination of the exemption less than two years later was the need to resolve the “apparent inconsistency” between the broadcast rules and the cable rules.⁷

Because the court has invalidated the Commission’s elimination of the single majority shareholder exemption in the cable context, the agency’s justification for deletion of that same exemption in the broadcast context simply cannot stand. Accordingly, NBC respectfully submits that the exemption should be reinstated in the broadcast attribution rules.

Respectfully submitted,

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⁶ *Id.* at 12560.

⁷ *Reconsideration Order* ¶ 42.